

1 Beverly Thorp
2 c/o Box 2070
3 Sunnyvale CA 94087
4 FC010
5

6
7 **UNITED STATES DISTRICT COURT**
8 Northern District of California
9 San Jose Division
10
11
12

Filed

JUN 10 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

13 **Plaintiffs:**

14 Beverly Thorp
15
16

17 v.

18 **Defendant:**

19 Judge Robert Atack, et al.
20 Superior Court of Santa Cruz
21 701 Ocean St.
22 Santa Cruz CA 95060
23
24
25

26 Does 1 through 99
27
28
29
30

Case No. C 08 – 01449 JF

**Rebuttal To Defendant's
Objection To Motion to Dismiss**

31 **Rebuttal To Defendant's Objection To Motion To Dismiss**
32
33
34

35 I, Beverly Ann Thorp, a flesh-and-blood woman, a human being, an Authorized
36 Representative and Agent for BEVERLY THORP, sui juris, Ingenuitas juris et de jure, a
37 State National citizen and NOT a Federal Zone citizen. Under a special appearance of
38 Propria Persona, Without Prejudice, under the Uniform Commercial Code, UCC 1-207,
39 UCC 1-103, and UCC 3-402, have first hand knowledge of the facts stated herein, and
40 being competent in mind and body to testify, declare and affirm the facts stated herein are
41 true correct, complete and admissible as evidence, in all material fact, not misrepresented
42 and are made pursuant to the Laws of the Union of States of America and the California
43 Republic.

1 **THIS REBUTTAL** has become necessary, because of the **ABSURD** and **FALSE**
2 **STATEMENTS** made by the Defendant in his Objection to the Plaintiff's Motion to Dismiss,
3 which I, Beverly Thorp, cannot let stand as true and correct.

4
5 **Statement of Fact**

6
7 On 14 March 2008, a Summons and Complaint was filed and sent by Certified Mailed with
8 return receipt card (Proof of Delivery) to the Defendant Judge Attack and Does 1 through
9 99 in FULL compliance and conformity with California Code of Civil Procedures § 415.30
10 and Federal Civil Procedure Rule 4. (see Exhibit 1)

11
12 The Federal District Court applied the Common Law Mailbox Rule, which provides proof
13 of mailing of a properly addressed communication bearing proper postage creates a
14 rebuttable presumption the communication was received. The Common Law Mailbox Rule
15 has taken precedence since **1502**. Sorrentino v. United States, 199 F. Supp. 2d 1068,
16 1078 (D. Colo. 2002). Liquorama Inc. v. American National Bank, 86 Ill App. 3d 974, 41 Ill
17 Dec. 951, 953, 408 N. E. 2d 373, 375. Texas Cas. Ins. Co. v. McDonald, Tex. Civ. App.
18 269 S. W. 2d 456, 457.

19
20 The addition to the fully compliant of the Certified Mailing with return receipt card (Proof
21 of Delivery) of the Summons and Complaint to the Defendant Judge Attack and Does 1
22 through 99, the Plaintiff to insure there were no complaints effected personal service of the
23 Summons and Complaint to the Defendants through an independent third party, who is not
24 a party to this action and who is at least 18 years of age. See Exhibit 2 for a copy to the
25 personal delivery and proof of service, in FULL compliance and conformity with California
26 Code of Civil Procedures § 413.10 through § 416.90 and Federal Civil Procedure Rule 4.

27
28 There is no question the Defendants received the Plaintiff's Summons and Complaint,
29 because attorney Troy Overton confirms proof of delivery with irrefutable proof by the
30 Defendant filing a "*Declination to Proceed Before a Magistrate Judge and Request For*

1 *Reassignment to a United States District Judge*", on 3 April 2008. This is PROOF
2 POSITIVE the Defendant received the Plaintiff's Summons and Complaint. See Exhibit 3
3 for a copy of this document and the Court's response.

4
5 **In Conclusion**
6

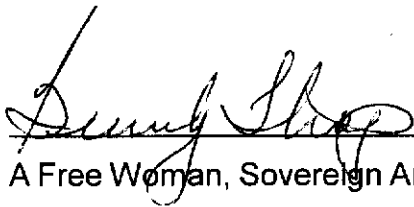
7 The Plaintiff has filed all document, including the Summons and Complaint, in full and
8 complete compliance with California Code of Civil Procedures and Federal Civil Procedure.
9 The bottom line of all of the toe dancing being done by the Defendants is, they are still in
10 DEFAULT and the Court should grant the Plaintiff's Motion For A DEFAULT JUDGMENT
11 or the SUMMARY JUDGMENT.

12
13 Further, Beverly Thorp saith naught.

14
15 Without Prejudice, UCC 1-207, UCC 1-103, & UCC 3-402

9 June 2008

16 Beverly Thorp, an Authorized Representative and Agent

17
18 
19

, In Propria Persona Sui Juris

20 A Free Woman, Sovereign American, with Constitutional Rights intact UCC § 3-402 (b)(1)

21 De Jure Soli, Jus Sanguinis, Coronea, Teste Meipso.
22
23
24

25 Reserving All Rights, Giving Up None.

26 Notice to agent is notice to principal. Noted to principal is notice to agent.

27 All Rights Reserved (UCC1-308)
28
29
30
31

PROOF OF SERVICE / DELIVERY

(CCP § 413.10 – 416.90)

I am a citizen of the California Republic. I am over the age of eighteen years. I am able and willing to testify to the facts stated herein.

I served the following document(s) on all appropriate parties in this action by placing a copy of the said document(s) in a sealed envelope, with postage attached, and deposited it with the U.S. Postal Service.

● **Rebuttal To Defendant's Objection To Motion To Dismiss** (FC010)

X I caused such envelope to be deposited in the mail with the U.S. Postal Service. The envelope was mailed with postage thereon fully prepaid. Mailed to each of the following:

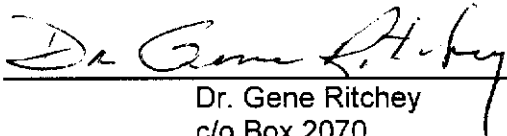
Judge Robert Attack, 701 Ocean St., Santa Cruz CA 95060.
Judge Paul Burdick, 701 Ocean St., Santa Cruz CA 95060.
Troy Overton, 455 Golden Gate Ave. Ste 11000, San Francisco CA 94102

___ The Proof of Service / Delivery signed by the authorized courier is on file and is available upon demand.

I am readily familiar with the practice of collection and processing correspondence for mailing. The above document(s) were deposited with the U.S. Postal Service within the time frame prescribed by law.

I declare, under penalty of perjury of the laws of the State of California the foregoing is true and correct.

9 June 2008


Dr. Gene Ritchey
c/o Box 2070
Sunnyvale CA 94087

Exhibit

1

7004 1160 0002 4819 1907

DOMESTIC MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

SANTA CRUZ CA 95060

JUDGE ROBERT ATTACK
701 OCEAN ST.
SANTA CRUZ CA 95060

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JUDGE ROBERT ATTACK
701 OCEAN ST.
SANTA CRUZ CA 95060

F2601

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X

Teresa Vega

☐ Agent☐ Addressee

D. Is delivery address different from item 1?

☐ Yes☐ No

If YES, enter delivery address below:

USPS

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7004 1160 0002 4819 1907

7004 1160 0002 4819 1907

Exhibit

2

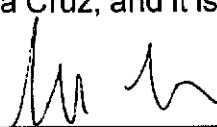
PROOF OF SERVICE / DELIVERY
(1013a, 2015.5 C.C.P.)

I am a citizen of the California state. I am over the age of eighteen years. I am able and willing to testify to the facts stated herein. I am not part of this action. I am an independent third party.

I personally served the following document(s) on the appropriate party identified below in this action by placing a copy of the said document(s) in the individual's hand.


- **Summons and Complaint (C08-01449 JF) for Judge Attack** (FC001)
- **Summons and Complaint (C08-01449 JF) for Judge Burdick** (FC001)
-

I, (Print Name) Max Calvo, am legally authorized to accept service for and on behalf of Judge Robert Attack and Judge Paul Burdick, 701 Ocean St. Santa Cruz CA 95060. Service of the Summons and Complaints (C08-01449 JF) was at 1:00 (AM/PM), 9 June 2008, at Superior Court of California County of Santa Cruz, and it is hereby legally admitted.


 (Signature of person accepting Service)

I declare, under penalty of perjury the laws of the State of California the foregoing is true and correct.

9 June 2008 (FC001A)


 Dr. Gene Ritchey
 Box 2070
 Sunnyvale CA 94087

Exhibit

3

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 PAUL T. HAMMERNESS
Supervising Deputy Attorney General
3 TROY B. OVERTON, State Bar No. 171263
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-5516
Fax: (415) 703-5480
6 Email: Troy.Overton@doj.ca.gov

7 Attorneys for Defendant JUDGE ROBERT ATTACK
(erroneously named as JUDGE ROBERT ATTACK)

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 **BEVERLY THORP,**

13 Plaintiffs,

14 v.

15 **JUDGE ROBERT ATTACK, et al.,**

16 Defendants.

Case No. C08-01449 HRL

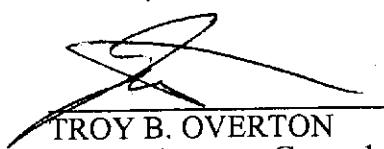
**DECLINATION TO
PROCEED BEFORE A
MAGISTRATE JUDGE AND
REQUEST FOR
REASSIGNMENT TO A
UNITED STATES DISTRICT
JUDGE**

17
18 The undersigned party hereby declines to consent to the assignment of this case to a
19 United States Magistrate Judge for trial and disposition and hereby requests the reassignment of
20 this case to a United States District Judge.

21 Dated: April 3, 2008

Respectfully submitted,

22 EDMUND G. BROWN JR.
Attorney General of the State of California

23
24 
25 TROY B. OVERTON
Deputy Attorney General

26 Attorneys for Defendant JUDGE ROBERT ATTACK
27 (erroneously named as JUDGE ROBERT ATTACK)
28

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **THORP, Beverly v. Judge Robert Attack**

No.: **C 08-01449-HRL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

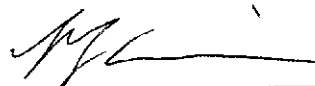
On April 3, 2008, I served the attached **Declination to Proceed Before A Magistrate Judge and Request for Reassignment to A United States District Judge** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Beverly Thorp
c/o Box 2070
Sunnyvale, CA 94087

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 3, 2008, at San Francisco, California.

Rosalinda F. Asuncion

Declarant



Signature

UNITED STATES DISTRICT COURT
Northern District of California
280 South First Street
San Jose, California 95113

www.cand.uscourts.gov

Richard W. Wicking
Clerk

General Court Number
408.535.5364

April 4, 2008

CASE NUMBER: CV 08-01449 HRL

CASE TITLE: BEVERLY THORP-v-JUDGE ROBERT ATTACK, ET AL.

REASSIGNMENT ORDER

GOOD CAUSE APPEARING THEREFOR,

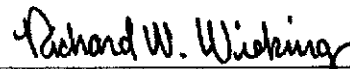
IT IS ORDERED that this case is reassigned to the **San Jose** division. Case reassigned to the **Honorable Jeremy Fogel** for all further proceedings.

Counsel are instructed that all future filings shall bear the initials **JF** immediately after the case number.

ALL MATTERS PRESENTLY SCHEDULED FOR HEARING ARE VACATED AND SHOULD BE RENOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THE CASE HAS BEEN REASSIGNED.

Date: 04/03/08

FOR THE EXECUTIVE COMMITTEE:


Clerk

NEW CASE FILE CLERK:

Copies to: Courtroom Deputies
Log Book Noted

Special Projects
Entered in Computer 04/04/08 tsh

CASE SYSTEMS ADMINISTRATOR:

Copies to: All Counsel

Transferor CSA